

## Launch of LRC Report on Regulatory Powers and Corporate Offences

### Remarks of the Attorney General Seamus Woulfe SC

23 October 2018

#### Introduction

1. President, Commissioners, ladies and gentlemen, good evening. I am delighted to be here this evening to launch the Law Reform Commission's Report on Regulatory Powers and Corporate Offences. It is a comprehensive and detailed report which makes over 200 recommendations for further reform on regulatory powers and corporate offences. It is very welcome, not least for its clear and logical review of the law in such a complex area.
2. However, before I refer to a few matters contained within the report, I would like to mention a number of points which I think should be kept in mind this evening.

#### Tributes

3. Firstly, you will all be aware that Mr Justice Quirke has recently retired as President of the Law Reform Commission, having served in the position since July 2012. It would be remiss of me not to pause here not only to acknowledge his work, but to sincerely thank him on behalf of the Government for such dedicated and committed public service.
4. Furthermore, I would also like to take the opportunity to welcome Ms Justice Mary Laffoy to her new role. After her distinguished service as a Member of the Supreme Court, Laffoy J. has acted most recently as Chair of the Citizens' Assembly, gathering views, marshalling opinions, and examining specific areas with a view to recommending actions. She is uniquely well placed to understand the needs of law reform, and is a wonderful addition to the Commission. I would like to wish her well for her tenure here.

#### Background

5. Finally, before coming to the matter at hand here today – the new Report – I think it apt to briefly touch on the role of the Law Reform Commission itself. It is important to understand the development and importance of the LRC before one can fully appreciate the value of its work.
6. On Tuesday, 4 February 1975, Mr Declan Costello SC, Attorney General, TD, took an unusual step. In his role as a TD, the Government decided he was best placed to bring forward the Bill which would aim to establish the Law Reform Commission, the Law Reform Commission Bill 1975.
7. While unusual now, it was not unheard of up to 1977 for an Attorney to also be a sitting TD. However, it was still a somewhat rare occurrence to have an Attorney

address the House, and rarer still for him to move legislation. That was, however, exactly what Mr Costello did, taking the Bill at all Stages in the Dáil and Seanad. In fact, the Standing Orders of the Seanad were actually amended to accommodate Mr Costello taking the Bill there. In that regard he said at Second Stage in the Seanad:

*Before going on to the Bill, could I take this opportunity of expressing my appreciation to the Seanad at its recent decision in relation to the amendment of Standing Orders to enable my participation in the deliberations of the Seanad? I hope that both myself and my successors in the office I now hold will frequently be able to avail of the opportunity which you have given to the Attorney General for the time being.*

8. This facility is indeed still provided for in Seanad Standing Order number 56, however I have not yet had this pleasure to date.
9. In his Dáil Second Stage remarks, Mr Costello referred in the first instance to the need to keep the law up-to-date, relevant, and efficient. While he made the comments over 43 years ago, I believe it is still accurate to say, as he did, that:

*If a community's laws become inadequate for the functions for which they were designed, if they become obsolete, or are too numerous, or over-refined by judicial interpretation, then cases of individual injustices will multiply and society as a whole will suffer. Governments in a dynamic fast-changing world should ensure that the laws are kept under constant review and are regularly and systematically reformed.*

10. However, he also recognised that law reform is not a simple endeavour. It requires specific expertise, robust legal skills, and a thorough engagement with relevant stakeholders, experts, and other parties. In this regard, he proposed the establishment of the Law Reform Commission as an impartial and expert body to undertake this task, linked back to Government through the Attorney General. On the 16 September 1974, the Government had announced the establishment of the LRC, with Mr Costello noting that:

*The Government is conscious of the need to undertake on a systematic basis a programme for improving, modernising and reforming the laws of this country. It has decided that to achieve this end a Law Reform Commission should be established.*

11. To date I have had worthwhile engagement with the Commission in the manner envisaged in the 1975 Act, both in the preparation of the forthcoming Fifth Programme of Law Reform, and through other general communications. Through its engagements, reports, and issues papers, the LRC has proven an invaluable resource and a font of expertise. This is once again evidenced in the Report being launched here today.

## **2017 Report: “white collar crime”**

12. As I mentioned at the outset, today’s Report on Regulatory Powers and Corporate Enforcement is a comprehensive and detailed one. Beginning with a useful account of some relevant historical developments, the Report provides useful context from the outset in which these recommendations can be understood.
13. As it has already been described, (by the *Irish Independent* today), perhaps the most ‘eye-catching’ recommendation is to establish a statutory Corporate Crime Agency and a dedicated unit in the Office of the Director of Public Prosecutions. This would require considerable re-organisation and re-structuring of corporate governance and enforcement measures as they currently stand. Indeed, this was noted in the Government’s 2017 report ‘*Measures to Enhance Ireland’s Corporate, Economic and Regulatory Framework; Ireland combatting “white collar crime”*’ (2017 Report), which included significant proposals in this regard. While considerable reform has already taken place since the 2008 financial crisis (as noted by both the LRC Report and the 2017 Report), more remains to be done. In this regard, the 2017 Report recommended a number of actions be taken, including both regulatory and legislative reform, and I note the Commission has commended the analysis in the 2017 Report, recognising some overlap with today’s Report.
14. Indeed, some of the changes recommended in 2017 have already occurred, such as the enactment of the Companies (Statutory Audits) Act 2018 and the Criminal Justice (Corruption Offences) Act 2018, with work on-going on other proposals, such as the Criminal Procedure Bill. I firmly believe that today’s Report is an additional valuable step in reforming the system, and complements the 2017 analysis. Together the reports provide a useful description of progress to date, and remaining actions to be achieved.

## **Administrative financial sanctions**

15. An area which I would like to briefly mention in particular is addressed in Chapter 3 of the Report, namely administrative financial sanctions. This chapter discusses the imposition of such sanctions as part of a ‘regulatory toolkit’ available to enforcement agencies, using the Central Bank’s Administrative Sanctions Procedure (ASP) as a reference model, noting that the High Court found this model to be constitutionally permissible in 2016 in the *Purcell* case.
16. The Report recommends that a similar model entitled the ‘Administrative Financial Sanctions’ (AFS) be extended more widely to similarly situated financial and economic regulators, and aligned with the process followed by the Solicitors’ Disciplinary Tribunal and the Medical Council’s Fitness to Practice Committee.
17. I should note at this point that I am of course not commenting on the constitutionality or otherwise of this recommendation or any others.

18. However, the recommendations of the report in relation to a panel structure, with specific criteria stated in statute, is not without precedent in similar forms. The success of the Medical Council in particular in operating a similar model is certainly noteworthy, and the recommendations certainly warrant careful consideration.

### **Other recommendations**

19. A number of other recommendations within the Report are also very worthy of discussion and consideration, and the detailed analysis of the LRC is invaluable in that regard. Discussion of several matters such as a 'due-diligence' defence, deferred prosecution agreements (DPAs), and addressing egregiously reckless risk-taking are useful and valuable areas for discussion.

### **Conclusion**

20. Finally ladies and gentlemen, I would like to reiterate my sincere thanks and appreciation to the Commissioners and all the staff of the Commission for their dedicated work of the highest quality in the preparation of this report.

21. Through constructive discussion and engagement reforms can be pursued, and the Report of the Law Reform Commission on Regulatory Powers and Corporate Offences is a valuable step in reform of the system of regulation and corporate governance.

Thank you.

ENDS